

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JODIE SHAWNTALE PENNIX,

Plaintiff,

v.

DEAN, *et al.*,

Defendants.

Case No. 7:19cv00051

FINAL ORDER

By: Hon. Thomas T. Cullen
United States District Judge

This civil rights case under 42 U.S.C. § 1983 was set for a two-day jury trial to begin on August 15, 2022, beginning at 9:00 a.m. in the United States District Courthouse in Roanoke, Virginia. At the scheduled Pretrial Conference on August 11, 2022, Plaintiff Jodie Shawntale Pennix, who is proceeding *pro se*, failed to appear or participate, and Clerk's Office staff were unable to reach him at either of the telephone numbers he and his foster mother had recently provided to the court. Therefore, the court granted the defendants' Motions to Dismiss the case with prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute.

This case concerns events that occurred when Mr. Pennix was incarcerated. The court notified him from the beginning of the case in January 2019 that if he failed to keep the court informed of a current mailing address by which to communicate with him, the case would be dismissed without prejudice. Ultimately, the case was scheduled for trial in January 2022. In early November 2021, Mr. Pennix notified the court that he was due to be released from incarceration on November 15, 2021. The court directed him that, within 10 days of his

release, he should provide the court with his updated address and a telephone number and/or email address the court could use to contact him about trial matters. He timely provided the court with a mailing address and a telephone number, and none of the court's mailings to him at that address has been returned as undeliverable.

The court scheduled an initial Pretrial Conference with the parties on Wednesday, January 12, 2022, via zoom.gov. Prior to that proceeding, the court issued an Order notifying Mr. Pennix that if he failed to participate in the Pretrial Conference proceeding, either by telephone or through the online platform zoom.gov, the case would be *dismissed with prejudice* for failure to prosecute. Specifically, the Order stated that, "if Pennix fails to dial in to the Pretrial Conference proceeding using the information mailed to him on how to do so, the court will presume that Pennix has lost interest in pursuing this case to trial." (Order ¶ 2 [ECF No. 65].) Mr. Pennix participated in that first Pretrial Conference call by telephone.

Shortly thereafter, a conflict of interest¹ required postponement of the trial until August 15–16, 2022. Notices and Orders regarding the new trial dates and another Pretrial Conference scheduled for August 5, 2022, were mailed to the address Mr. Pennix had provided to the court. On July 25, 2022, the Clerk's Office mailed Mr. Pennix a Notice rescheduling the Pretrial Conference for August 11, 2022, at 2:30 p.m. This Notice included instructions on how he could connect via Zoom or telephone to participate in the conference call. On July 28, 2022, the court's deputy clerk attempted to call Mr. Pennix at the phone number he had provided to verify that he had received the Notice of the change of date for the Pretrial

¹ The conflict existed between defense counsel and one of the defendants. Because a defendant was then left without counsel on the eve of trial, the court postponed the trial until new, independent counsel could be secured.

Conference. No one answered her calls, and a recording informed her that the voicemail box was full, so she was not able to leave a voicemail message for Mr. Pennix.

On August 10, 2022, the deputy clerk received a phone call from Shirley West, Mr. Pennix's foster mother. Ms. West said that the previous phone number was no longer in service, but that the court could reach Mr. Pennix at her phone number, which she provided. The deputy clerk notified Ms. West that Mr. Pennix would need to be on the line for the Pretrial Conference on August 11, 2022, between 2:00 and 2:30 p.m.

On August 11, 2022, at 2:05 p.m., another deputy clerk called Mr. Pennix at the number Ms. West had provided for him. Ms. West answered the phone but reported that she had not seen Mr. Pennix that day. She said she had tried to contact him through others but had been unable to find him. At 2:15 p.m., the deputy clerk tried to telephone Mr. Pennix at the number he had previously provided to the court. There was no answer. At 2:20 p.m., the deputy clerk tried to telephone Mr. Pennix again at the number that Ms. West had provided. There was no answer. The deputy clerk left a message for Mr. Pennix to contact her as soon as possible to arrange for him to participate in the 2:30 p.m. Pretrial Conference. He failed to do so.

At 2:30 p.m. on August 11, 2022, as scheduled, the court met, via zoom.gov, with counsel for the defendants. Mr. Pennix did not join in the meeting via zoom.gov or telephone. On the record, the deputy clerk reviewed the court's efforts to contact him to ensure that he could participate in the Pretrial Conference. Based on Mr. Pennix's failure to prosecute his claim, Defendants' counsel moved to dismiss the case with prejudice. The court construed Defendants' motions as arising under Rule 41(b), granted dismissal with prejudice, and indicated that the jury trial would be cancelled.

Based on Mr. Pennix's failure to participate in the Pretrial Conference, despite the court's efforts to assist him in doing so, it is **ORDERED** as follows:

1. Defendants' oral Motions to Dismiss for failure to prosecute are **GRANTED** and this case is **DISMISSED WITH PREJUDICE**;
2. The jury trial scheduled for August 15–16, 2022, is **CANCELLED**; and
3. The clerk will **STRIKE** it from the court's active docket.

The clerk is directed to forward a copy of this Order to Mr. Pennix and to counsel of record for Defendants.

ENTERED this 12th day of August, 2022.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE